

COMMITTEE ON LIMITED JURISDICTION COURTS

MINUTES

Wednesday, October 31, 2012

10:00 a.m. to 2:15 p.m.

Conference Room 119A/B

1501 West Washington Street

Phoenix, AZ 85007

Present: Judge Antonio Riojas, Chair, Carla F. Boatner, C. Daniel Carrion, Janet G. Cornell, Judge Timothy Dickerson, Judge Maria Felix, Judge James William Hazel, Jr., Judge Eric Jeffery, Patrick Kotecki, Judge Dorothy Little, Judge MaryAnne Majestic, Judge Arthur Markham, Judge Steven McMurry, Lisa Royal, Judge J. Matias "Matt" Tafoya, James "Marty" Vance, Sharon Yates

Absent/Excused: Marla Randall

Presenters/Guests: Judge Mark Anderson (West Mesa Justice Court), Theresa Barrett (AOC), Stewart Bruner (AOC), Ashley Dammen (AOC), Jennifer Greene (AOC), Anne Hunter (AOC), Cameron Janati (Arizona Association of Certified Process Servers), Jennifer Jones (AOC), Paul Julien (AOC), Ken Kung (AOC), Jerry Landau (AOC), Amy Love (AOC), Michael Malone, (LJCAA President), Sheryl Rabin, Esq. (Maricopa County Justice Courts), Marcus Reinkensmeyer (AOC)

Staff: Mark Meltzer (AOC); Julie Graber (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The October 31, 2012, meeting of the Committee on Limited Jurisdiction Courts ("LJC") was called to order at 10:02 a.m. by Judge Antonio Riojas, Chair. Judge MaryAnne Majestic announced the retirement of Janet Cornell as of November 1, 2012. Members wished her good luck in her future endeavors. Marcus Reinkensmeyer applauded Ms. Cornell's work and contributions to court administration throughout the years and presented her with a certificate of appreciation from Chief Justice Rebecca Berch for Ms. Cornell's contributions to the LJC.

B. Approval of Minutes

The draft minutes from the August 22, 2012, meeting of the LJC were presented for approval.

Motion: To approve the August 22, 2012, meeting minutes, as presented. **Action:** Approve, **Moved by** Janet Cornell, **Seconded by** Judge Timothy Dickerson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Jerry Landau, AOC Director of Government Affairs, discussed legislative proposals of interest to limited jurisdiction courts in the 2013 legislative session.

Criminal code; conforming changes (Criminal Justice System): Adds a definition of “criminal offense” in juvenile victim’s rights cases to conform to adult victim’s rights cases.

B. Legislative Proposal Regarding Title 22

Judge Steven McMurry introduced Judge Mark Anderson from West Mesa Justice Court, who presented proposed changes that the Legislature may consider in the next legislative session that would bring up to date sections of Title 22 regarding justice courts. Judge Anderson provided some background about this Title, which has not been revised in nearly 60 years, and which consequently needs updates. He explained that the goal was not to make substantive changes but rather to modernize the language and conform it to current practices and procedures. Judge Anderson reviewed the suggested revisions, which included replacing “docket” with “judicial records,” allowing the use of a digital seal as an official seal, and removing language that 1) required summonses for defendants residing in different counties to be issued to each county (summonses are issued to individuals, not counties), and that 2) required a party’s affidavit for a change of venue to be supported by the affidavit of two other creditable persons from the county (superior courts do not have this requirement). In addition, dollar amounts were increased for required deposits, bonds and credits to be consistent with current fees and costs. Judge Anderson sought feedback and suggestions from LJC. Members may forward comments directly to Sheryl Rabin, Esq. at SherylRabin@mcjc.maricopa.gov.

Judge McMurry supported this proposal and called attention to a substantial change under section 22-220(B) that could be controversial to some. The amendment would require a party to provide fourteen (14) days advance notice to demand a jury trial. Currently, a party may demand a jury trial at any time before the trial, including on the day of the trial, which is extremely disruptive to the courts. Mr. Landau reported the formation of an AOC internal workgroup that will meet in November to review the proposed changes that might impact the new Justice Court Rules of Civil Procedure, and he anticipated hearing more on this subject in the future. Some members noted that the language in Title 22 was not relevant to all counties.

C. Revisions to A.C.J.A. § 7-205: Defensive Driving Schools

Anne Hunter, AOC Manager of the Certification and Licensing Division, presented proposed revisions to ACJA § 7-205: Defensive Driving Schools, which would establish 1) certification and curriculum requirements for a teenage driver school; 2) guidelines for judges when reviewing a law enforcement officer’s request to be certified as a defensive driving instructor; and 3) advertisement restrictions for driving schools. In addition, the amendments increase driving schools’ reinstatement application fee (from \$100 to \$1,000), and clarify the appropriate appearance and format of fees on driving schools’

websites as well as the process for positively identifying students enrolled in an online class. Finally, the revisions delete 1) the fee distinction in regard to the length of time from initial certification to renewal; and 2) the minimum number of classes required for an instructor to teach during a certification renewal cycle. Ms. Hunter advised that the proposed changes incorporate feedback and comments received from various stakeholders and are posted on the ACJA forum. The deadline for public comment is 11/9/12. Ms. Hunter sought comments from LJC as well as recommendation that the Arizona Judicial Council (AJC) adopt the proposed changes to ACJA § 7-205.

Members inquired about the teenage option and whether this option was required or cost the same as other types of classes. Ms. Hunter indicated that the teenage class is optional and costs the same. Marty Vance sought clarification about the intended goal of the new guidelines for law enforcement officers. Judge Riojas recalled that the intent was to eliminate any appearance of conflict for law enforcement officers that would look like they would be writing more tickets to make more money.

Motion: To recommend that AJC adopt the proposed changes to ACJA § 7-205, as presented. **Action:** Approve. Motion passed unanimously.

D. Revision to A.C.J.A. § 7-204: Private Process Servers

Anne Hunter, AOC Manager of the Certification and Licensing Division, summarized proposed revisions to ACJA § 7-204, Private Process Servers, which incorporate best practices in the regulatory arena, including residency requirements, factors to consider when reviewing an application for certification, and disciplinary sanctions. Ms. Hunter pointed out that in contrast to other programs and professions regulated by the Supreme Court, the Private Process Servers Program (“Program”) is decentralized. While the Supreme Court is responsible for adopting rules, policies, and forms to administer the Program, the entire application and examination process is overseen by the Clerks of the Superior Courts, and all final decisions regarding the granting or denying of applications and certifications, and regarding complaints and disciplinary proceedings are made by the Superior Court Presiding Judges. She explained that many of the new proposed provisions were modeled after ACJA § 7-201, which covers a number of other professions under the Supreme Court’s authority, to bring consistency. Ms. Hunter noted that the proposed amendments have been circulated for public comment and will be forwarded to the AJC for review. She sought recommendation that the AJC adopt the proposed changes to ACJA § 7-204, with any suggested amendments by LJC.

Cameron Janati, representative from the Arizona Association of Certified Process Servers (“the Association”), presented the Association’s comments in support and in opposition to the proposed changes.

The Association supports:

- using the term “certified” process servers instead of “registered”;
- closing the continuing education loopholes;
- eliminating provisional certification; and
- requiring certified process servers to have at a minimum a high school diploma.

The Association is opposed to:

- omitting the requirement for personal references in application materials;
- allowing non-Arizona residents to become certified process servers in Arizona;
- requiring additional documentation (such as an agenda) for continuing education activities of eight hours or more; and
- any allowance or set-aside order allowing a convicted felon to become a certified process server.

Finally, Mr. Janati put forth an amendment to the proposed changes that would add a requirement for an applicant to complete 40 hours of pre-certification training before taking the initial written examination to become a certified process server.

Members considered the proposed revisions and comments. Discussion ensued about the following points:

- Members were in favor of preserving the professionalism of certified process servers but some worried that the professionalism would be diluted by allowing non-Arizona residents to become certified process servers in Arizona.
 - Some members contended that dropping the residency requirement would eliminate any accountability because it would open up outside companies to come here, make mistakes, and then leave without any responsibility.
 - However, others worried that keeping the requirement would constitute a blanket prohibition that would be very restrictive and probably an unlawful restraint of trade.
 - Questions arose about the actual need for consistency and if any legal challenges were anticipated.
 - Ms. Hunter reported that the code section was modified to bring consistency in keeping with other professions' code sections, which are written this way.
- Several members expressed concerns that professionalism would be diluted by allowing convicted felons to become certified process servers.
 - Several members questioned the message it would be sending.
 - Some members contended that a felony conviction should not be the only criteria considered in the evaluation process and each application should be reviewed on a case-by-case basis. Someone should not be barred for the rest of his or her life for an unrelated felony conviction 40 years ago.
 - Questions arose about what constituted a "reasonable relationship to the profession."
 - Ms. Hunter advised that there is no specific definition given of "reasonable relationship to the profession" and it is written like this elsewhere.
- While a few members did not consider the removal of reference letters as a substantive change that would impact the professionalism of the profession, others reported a reliance on reference letters in their review of applications.
- Members supported continuing education requirements, including mandatory pre-certification training with an ethics component.
- In response to fingerprinting questions, Ms. Hunter clarified that the fingerprinting requirements were not eliminated.

Motion: To amend the proposed revisions to ACJA § 7-204 by adding pre-certification training requirements with an ethics component to be completed before applying for certified process server certification, as discussed. **Action:** Approve. **Moved by** Judge Arthur Markham, **Seconded by** Marty Vance. Motion passed 15-1.

Motion: To remove any allowance for convicted felons to become certified process servers, as discussed. **Action:** Approve. **Moved by** Marty Vance, **Seconded by** Judge Steven McMurry. Discussion ensued. Ms. Hunter responded to questions about the intent of the current and proposed languages (pages 17-18) by noting that currently, the judge *may* deny an applicant based on a felony conviction, and in the proposed language, a crime's "reasonable relationship to the profession" was added as a qualification. Motion failed 4-11.

Motion: To approve the proposed revisions to ACJA § 7-204 by adding a definition for "reasonable relationship to the profession," as discussed. **Action:** Approve. **Moved by** Judge Maria Felix, **Seconded by** Judge Timothy Dickerson. Discussion ensued. Members debated the proposed language under new section E(5)(b)(4) (page 17). Some members found the language in the last sentence to be problematic and not strong enough to protect the process server profession because it would limit the authority and discretion of judges. Motion was amended. **Amended Motion:** To approve the proposed revisions by striking the last sentence under section E(5)(b)(4) and by adding a definition for "reasonable relationship to the profession." **Action:** Amend. **Moved by** Judge Maria Felix, **Seconded by** Judge Timothy Dickerson. Discussion ensued about whether to include at all the proposed language in this paragraph and the "reasonable relationship to the profession." Members agreed that the paragraph should be left as it is currently. Motion was withdrawn.

Motion: To amend the proposed revisions to ACJA § 7-204 by removing the proposed language under new section E(5)(b)(4), formerly section (5), and leaving it as is, as discussed. **Action:** Amend. **Moved by** Daniel Carrion, **Seconded by** Judge MaryAnne Majestic. Motion passed unanimously.

Motion: To approve the proposed revisions to ACJA § 7-204 that require supporting documentation for continuing education activities of eight hours or more, as discussed. **Action:** Approve. **Moved by** Judge Timothy Dickerson, **Seconded by** Marty Vance. Motion passed unanimously.

Motion: To approve the proposed revisions to ACJA § 7-204 that allow an out-of-state entity to be certified in Arizona as a certified process server, as discussed. **Action:** Approve. **Moved by** Judge Timothy Dickerson, **Seconded by** Judge MaryAnne Majestic. Motion passed 8-6.

Motion: To recommend that AJC approve the remainder of the proposed revisions to ACJA § 7-204, as discussed. **Action:** Approve. **Moved by** Judge Timothy Dickerson, **Seconded by** Daniel Carrion. Motion passed unanimously.

E. Updated on the MAS Checklist

Jennifer Jones, AOC financial specialist, presented changes to the annual Minimum Accounting Standards (MAS) Checklist, which are intended to clarify and make the checklist more user-friendly by aligning questions with court processes and with applicable MAS, as well as to encourage electronic submission of the checklist. Ms. Jones stressed that electronic submission is not mandatory at this time and that the checklist could still be submitted in a paper format. She highlighted the checklist's new features, which include fillable fields; new electronic signature field for the preparer; and the ability to add reviewer(s) so the checklist may be reviewed by others, including the county's presiding judge. Ms. Jones anticipated the checklist to be published by December 1 and is due March 31, 2013. Questions may be forwarded directly to her at jjones2@courts.az.gov.

F. Proposed A.C.J.A. § 1-50X: Storage and Presentation of Electronic Court Records

Stewart Bruner, COT staff and AOC manager of strategic planning, provided some background and updates about proposed ACJA § 1-50x, which was posted on the ACJA Rules Forum by COT to gather input from the court community about proposed policies regarding the storage of electronic documents and deletion of documents reaching the end of their retention periods. Mr. Bruner focused on the larger policy issues brought about by digitization of court records and the likely fate of the proposed code section. After he explained that the proposed code section involved the infrastructure below the line (as opposed to interfaces above the line), he reviewed the lifecycle of an electronic document from creation to removal as compared to a paper document. Mr. Bruner discussed some of the implications of access (permissive versus restrictive), retention, and cost ramifications (hardware, administration, privacy risks, and security controls), which highlighted the need for policies regarding the total lifecycle of electronic documents, for input from court executives, and for an appropriate communication vehicle (Administrative Order, Code Section, or Administrative Directive) before any sale of documents can begin.

A member raised an issue with having to purge very old civil citations (20 years old), which cannot be done effectively on a case-by-case basis. Mr. Bruner commented that it is why we need a policy to be implemented across the board but the AOC is not ready at this time.

G. Recommendations of the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings

Mark Meltzer, staff to the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings ("Wireless Committee") updated members on the committee's progress, and reviewed the committee's proposed drafts and recommendations.

1. The jury admonition was revised to make it more effective and understandable and ties in with the smart juror card. The admonition, for example, contains directions to

- jurors about not friending judges and court staff. The oath was changed by including the words: “comply with the admonition.”
2. New proposed Supreme Court Rule 122.1 was added, which describes permissible uses of portable electronic devices in the courtroom and courthouse. Because some courthouses are historic buildings, photography is only prohibited in the courtroom. In response to some concerns, though, language was added listing specific people whom cannot be photographed by the public.
 3. Supreme Court Rule 122 was revised concerning the use of cameras in the courtroom, by prohibiting photography of victims; changing the notice requirements (seven days for trials and 48-hours for other proceedings); and adding a new definition of “person.”

Mr. Meltzer noted that the draft rules have been presented to various stakeholders (COSC, COVIC, Arizona Association of Superior Court Administrators, and Superior Court Presiding Judges) and incorporate pre-filing input received. The Wireless Committee will meet on November 7 to finalize its report and recommendations, which will be presented to the AJC in December. He requested that LJC support the Wireless Committee’s recommendations and approve the four draft rules.

Members voiced concerns about the language in Rule 122.1 requiring portable devices to be silenced rather than turned off and inquired about the committee’s intent regarding a judge’s ability to exercise discretion and control the courtroom.

Motion: To approve the Wireless Committee’s four draft rules, subject to substituting the word “terminate” with “prohibit” on page 2, paragraph (e) of Rule 122.1. **Action:** Approve. **Moved by** Judge Dorothy Little, **Seconded by** Judge Steven McMurry. Discussion ensued. Motion passed unanimously.

H. 2012 Rules Update

Mark Meltzer provided an update on the rules impacting the limited jurisdiction courts. The general effective date of the rule changes is January 1, 2013. The following rules were highlighted:

- Some rule petitions were resolved in the JCRCP (e.g., removal of discharge in bankruptcy, and entry of default).
- Major changes to Rule 56 of the Ariz. R. Civ. P.
- Changes to E.R. 7.5 allowing the use of trade names by law firms.
- Amendments to ARPOP Rule 1(C) regarding access to the courts and protection order case information. Proof of service is required for a hearing to be scheduled. Questions about this rule may be forwarded to Kay Radwanski.

The court will have its next rules agenda in December 2012.

I. Update on the Justice Court Rules of Civil Procedure (“JCRCP”)

Paul Julien, AOC Judicial Education Officer and Chair of the Committee on the Civil Rules of Procedure for Limited Jurisdiction Courts (“RCiP”), and Mark Meltzer, AOC

committee staff, announced the adoption of the Justice Court Rules of Civil Procedure (“JCRC”) by the Supreme Court during its August 2012 Rules Agenda. Mr. Julien provided a summary of the stylistic changes and other improvements made to the JCRC. He reviewed upcoming programs from the AOC’s Educational Services Division for limited jurisdiction court judges and advised that a training session on the content and implementation of the new rules would take place on December 10 and hopefully it would be recorded and available for future viewing. The new rules are effective January 1, 2013.

J. Approval of Meeting Dates for 2013

Judge Riojas presented proposed 2013 meeting dates for committee approval:

January 23, 2013

April 24, 2013

August 21, 2013

October 2, 2013

Motion: To approve the proposed 2013 meeting dates. **Action:** Approve. **Moved by** Judge McMurry, **Seconded by** Janet Cornell. Motion passed unanimously.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None.

Mr. Meltzer stated that the strategic agenda would be added to the January agenda and he encouraged members to submit any strategic initiatives before the January meeting.

Judge Riojas announced the formation of a new committee called the Arizona Case Processing Standards Committee, which will be looking at case types for all courts.

B. Adjournment

Motion: To adjourn. Motion was seconded and passed unanimously. Adjourned at 3:29 p.m.

C. Next Committee Meeting Date:

Wednesday, January 23, 2013

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 230

1501 West Washington Street

Phoenix, AZ 85007